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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,158	09/12/2003	Michael S. Marietta	33460	8727

7590

07/14/2004

Hovey Williams LLP  
Suite 400  
2405 Grand Blvd.  
Kansas City, MO 64108

EXAMINER

BEHREND, HARVEY E

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/662,158

Applicant(s)

MARIETTA, MICHAEL S.

Examiner

Harvey E. Behrend

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 8, 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/12/03 & 1/30/04
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_

Art Unit: 3641

1. Applicants election without traverse in the 5/26/04 response of Group I (claims 1-7) is acknowledged.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Buck (Canada 674645).

Note the drawings. The claimed upper and lower seals of a substantially incombustible material read on elements 6, 14 which can be of cork, asbestos, etc., (see page 3 lines 9-16).

4. Claims 1, 4-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Decker (US 2103936) or Pain (II) (US 1299217).

In Decker, note upper and lower clay seals 18, 19. The claimed casing reads on the combination of tightly fit together, cardboard tubes 10, 17 (which could even be glued together (note page 2 lines 10+)).

Art Unit: 3641

In Pain (II), the lift charge reads on element 14 (which can be ignited by a suitable fuse (page 1 lines 55 to 63)) and the effects charge reads on element 17, the upper and lower clay seals read on elements 12, 16 (page 1 lines 50+) and the timing fuse reads on element 25.

5. Claims 2, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Decker, Pain (II) or Buck, in view of any of Rouse et al (US 6412416), Maretti (US 3060854) or Pearsall (US 1907863).

The primary references have been discussed above. The secondary references each show it is old and advantageous in the art to provide a paper like layer between a charge and a ceramic or clay layer and to have so modified any of the primary references by providing a paper layer between the upper and/or lower seal layers and the effects charge, would accordingly have been prima facie obvious (e.g. see col. 5 lines 46+ of Rouse et al; wall 13 which covers ballast 5 (col. 1 lines 61+ and fig. 3) of Maretti and; col. 1 on page 1 of Pearsall.

6. The other references cited further illustrate pertinent art.

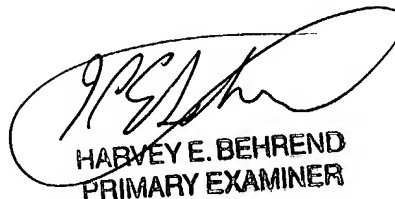
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is (703) 305-1831. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195.

Art Unit: 3641

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

Behrend/vs  
June 21, 2004



HARVEY E. BEHREND  
PRIMARY EXAMINER